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**OFFICE OF PETITIONS**

In re Application of :  
Kume et al. : DECISION ON APPLICATION  
Application No. 09/610,263 : FOR  
Filed: July 5, 2000 : PATENT TERM ADJUSTMENT  
Atty Docket No. 31671-164489RK:

This is a decision on the "Request for PTA Calculation Review" filed June 13, 2005. Applicants request that the initial determination of patent term adjustment under § 154(b) be corrected from 0 days to 309 days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 11, 2005, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 0 days.

In response, applicants timely filed the instant request for reconsideration of the patent term adjustment along with payment of the fee set forth in 37 CFR § 1.18(e)<sup>1</sup>. Applicants contend

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<sup>1</sup> The Issue Fee payment was also received on June 13, 2005.

that the PTA at the time of the mailing of the notice of allowance should be 309 days, based on the following:

i) applicants state that the period of adjustment pursuant to 1.703(a)(1) is 136 days (not 146 days); ii) a period of adjustment of 242 days should be entered for Office delay in not responding until May 28, 2003 to their amendment to the first Office action filed May 29, 2003; and iii) otherwise, applicants' calculations agree with those of record.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

The application history has been reviewed and it has been determined that period of adjustment pursuant to 1.703(a)(1) of 146 days is correct. As agreed by applicants, the application was filed on July 5, 2000, and the Office mailed a first Office action under 35 U.S.C. 132 on January 29, 2002. The period of adjustment under § 1.703(a)(1) is 146 days, beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), September 6, 2001 and ending on the date of mailing of an action under 35 U.S.C. 132, January 29, 2002. Applicants' calculation of 136 days is incorrect.

However, applicants are correct that a period of adjustment should be entered for Office delay in taking action in response to their amendment filed May 29, 2002. An Office action was re-mailed to applicants on May 28, 2003. (The Office action was previously re-mailed on August 28, 2002 to incorrect address.) In view thereof, it is appropriate to use May 28, 2003, as the date of mailing of an action under 35 U.S.C. 132. Accordingly, the period of adjustment under § 1.703(a)(2) is 241 days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed, September 30, 2002 and ending on the date of mailing of an action under 35 U.S.C. 132, May 28, 2003.

Furthermore, a review of the record reveals that the patent term adjustment should not have been reduced by 402 days for applicants' filing of a response on November 28, 2003. The examiner did re-mail the Office action on May 28, 2003 and restart the period for reply. Applicants responded outside of the three months period set forth in § 1.704(b), but only by 92 days. Accordingly, the period of reduction is 92 days, not 402 days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 257 days (440 (146 + 241 + 53) days of Office delay reduced by 183 (30 + 92 + 61)).

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 22-0185, as acknowledged.

The application is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries regarding this matter should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Kery A. Fries".

Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen